

1 HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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10 PATRICE L. LANDAKER, and
THEODORE LANDAKER

11 Plaintiffs,

12 v.
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14 BANK OF AMERICA NA,
15

16 Defendant.

CASE NO. C14-5459 RBL

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

17 Plaintiffs present claims arising from the pending non-judicial foreclosure of their
18 residential property by Defendant Bank of America, N.A. Although the Complaint fails to clearly
19 delineate the asserted claims, Plaintiffs appear to bring a cause of action to quiet title, and seek
20 relief for the Defendant's purported violations of Washington's Deed of Trust Act and
21 Washington's Consumer Protection Act.
22

Because the Plaintiffs are collaterally estopped from challenging the Defendant's interest
in the promissory note and deed of trust, and because any discernible causes of action in the
Complaint are predicated on a successful challenge of the Defendant's interest in the mortgage
note, the motion is **GRANTED** and the case is **DISMISSED** with prejudice.
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1 In August 2005, the Landakers borrowed \$335,000 from Keybank to purchase residential
2 property, evidenced by a promissory note and secured by a deed of trust on the property. The
3 Deed granted the note holder the power to foreclose the property in the event of default, and
4 listed Mortgage Electronic Registration Systems, Inc. (“MERS”) as the nominee for lender and
5 lender’s successors and assigns. MERS assigned its beneficial interest under the Deed to the
6 Defendant.

7 In 2012, Ms. Landaker filed a Complaint against Bank of America N.A. and its CEO,
8 Brian T. Moynihan, which the Court summarily dismissed. *See Landaker v. Moynihan et al.*, No.
9 12-cv-05377 (W.D. Wash. Jul. 24, 2012). In the 2012 action, Ms. Landaker asserted, *inter alia*,
10 that Bank of America N.A. had no interest in the promissory note or deed of trust executed by
11 the Landakers. The court dismissed Ms. Landaker’s action while rejecting her “show me the
12 note” argument and establishing the validity of MERS’s assignment of the Deed to Bank of
13 America N.A. *Id.* at 8.

14 The Plaintiffs are collaterally estopped from challenging the Defendants’ interest in the
15 Deed. The doctrine of collateral estoppel prevents relitigation of an issue after a party has had a
16 full and fair opportunity to present its case. The purpose of the doctrine is to promote the policy
17 of ending disputes, to promote judicial economy, and to prevent harassment of, and
18 inconvenience to, litigants. The requirements which must be met when applying the doctrine are:
19 (1) the issue decided in the prior adjudication must be identical with the one presented in the
20 second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the
21 party against whom the plea is asserted was a party or in privity with a party to the prior
22 adjudication; and (4) application of the doctrine must not work an injustice. *See Hanson v. City*
23 *of Snohomish*, 121 Wn.2d 552, 561-561, 852 P.2d 295 (1993). Each element is met here.

1 The Defendant's interest in the promissory note and authority under the Deed were
2 established by Judge Bryan in the prior action. *See Landaker*, No. 12-cv-05377, at 8. Therefore,
3 the Plaintiffs are collaterally estopped from challenging the Defendant's interest in the note and
4 Deed, and any subsequent action founded on a challenge to that interest necessarily fails. As the
5 Plaintiffs again seek to challenge the Defendant's authority under the Deed and interest in the
6 promissory note, the case must be dismissed.
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8 Even if the claims were not barred by collateral estoppel, the Complaint lacks facts
9 sufficient to support a claim plausible on its face. Dismissal under Rule 12(b)(6) may be based
10 on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a
11 cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).
12 A complaint must allege facts to state a claim for relief that is plausible on its face. *See Ashcroft*
13 *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking
14 relief "pleads factual content that allows the court to draw the reasonable inference that the
15 defendant is liable for the misconduct alleged." *Id.* Although the Court must accept as true a
16 complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not
17 defeat an otherwise proper Rule 12(b)(6) motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249
18 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A]
19 plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than
20 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
21 do. Factual allegations must be enough to raise a right to relief above the speculative level."
22 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted). This
23 requires a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me
24 accusation." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555).
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1 Here, the Complaint fails to allege any specific violations of law under Washington's
 2 Consumer Protection Act or Washington's Deed of Trust Act. Additionally, the complaint lacks
 3 sufficient factual allegations to support any claim for relief. The Complaint relies on conclusory
 4 allegations, for example that "Defendant BANK OF AMERICA has no authority to foreclosure
 5 on its Deed of Trust." Decl. of Jody M. McCormick, Ex. A [Dkt. #10]. The Plaintiffs admit that
 6 the Complaint's primary factual allegation relates to whether the Defendant has any interest in
 7 the promissory note that would establish the Plaintiffs' duty to make payments to the Defendant.

8 See Plaintiff Landakers' Response to the Motion to Dismiss at 1 [Dkt # 11] ("The primary
 9 factual allegations in Plaintiffs' Amended Complaint relate to the fact that Plaintiff never
 10 promised to pay BANA any funds, nor is BANA the owner of, or in possession of, a valid
 11 assignment establishing any obligation on the part of the Plaintiff."). Courts of this district
 12 routinely reject these "show me the note" claims. See, e.g., *Mikhay v. Bank of Am.*, NA., 2011
 13 WL 167064, *2-*3 (W.D. Wash. 2011); *Wright v. Accredited Home Lenders*, 2011 WL 39027
 14 (W.D. Wash. 2011); *Pelzel v. First Saving Bank Northwest*, 2010 WL 3814285, at *2 (W.D.
 15 Wash. 2010); *Wallis v. IndyMac Fed. Bank*, 717 F. Supp. 2d 1195, 1200 (W.D. Wash. 2010);
 16 *Freeston v. Bishop, White & Marshall, P.S.*, 2010 WL 1186276, at *6 (W.D. Wash. 2010).
 17 Indeed, the Washington Deed of Trust Act requires that a foreclosing lender demonstrate its
 18 ownership of the underlying note to the trustee, not the borrower. RCW 61.24.030(7).
 19 Furthermore, the Plaintiffs do not claim to have satisfied the mortgage obligation, and do not
 20 claim to have made payments to any other party. In short, all of Plaintiffs' claims fail as a matter
 21 of law.

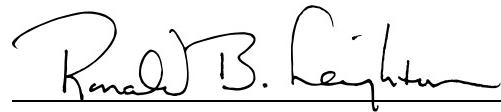
22 Where the facts are not in dispute, and the sole issue is whether there is liability as a
 23 matter of substantive law, the court may deny leave to amend. *Albrecht v. Lund*, 845 F.2d 193,
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1 195-96 (9th Cir. 1988). The essential facts are not in dispute in this case as the Plaintiffs are
2 collaterally estopped from challenging Bank of America N.A.'s interest in the note; thus, the
3 Court denies leave to amend.

4 The Motion to Dismiss is GRANTED and the Plaintiffs' claims are DISMISSED.
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6 **IT IS SO ORDERED.**

7 Dated this 22nd day of September, 2014.

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10 RONALD B. LEIGHTON
11 UNITED STATES DISTRICT JUDGE

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